REMARKS

Applicant respectfully requests reconsideration of this application. The above amendments to the claims do not present any new issues and, therefore, Applicant respectfully submits that they should be entered.

The Rejections Under 35 USC 112
Can Be Withdrawn.

The Examiner rejected claims 6, 16 and 17 because of the language regarding "the node." Applicant has clarified the claims by indicating that it is the "source node" that ascertains and selects one of the paths. Now those claims are clear and consistent with the written description. Page 7, lines 21-26; page 9, line 17, through page 13, line 19, and Figures 1A and 1B provide support for the claims as amended.

The Examiner also rejected claims 16 and 18 as being indefinite. Those claims originally recited "wherein R'_{ACR} is less than R_{ACR}." "R'_{ACR}" was inadvertently presented as "R_{ACR}" in the claim amendments submitted on April 24, 2008 due to a typographical error. Applicant has amended the claims and they are now clear and definite.

The rejections under 35 USC 112 can be withdrawn.

The Rejections Under 35 USC 102
Should Be Withdrawn.

The rejection of claim 5 is moot as that claim is cancelled.

Applicant respectfully traverses the rejection of claims 6, 10, 15 and 17 as being anticipated by the Shirai et al. reference. There is no prima facie case of anticipation because the Shirai reference does not disclose ascertaining whether M alternative paths exist with available resources able to satisfy the R_{ACR} for transferring traffic between the source node and the destination node as recited in claims 6, 15 and 17, respectively. There is nothing in the Shirai reference that teaches ascertaining whether M alternative paths exist. In each instance pointed to by the Examiner, the Shirai reference already has an assigned backup trunk. There is nothing in the reference that teaches a source node ascertaining whether the backup trunk exists because it is pre-assigned to that node. Further, there is nothing regarding a source node ascertaining whether

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the pre-assigned backup trunk has available resources able to satisfy the R_{ACR} for transferring traffic between the source node and the destination node. Instead, if there is congestion, the backup trunk is automatically selected as a default.

Given that the source node in the Shirai et al. reference does not ascertain either of the features mentioned above, there is no prima facie case of anticipation.

The Rejections Under 35 USC 103
Should Be Withdrawn.

Each of the rejections under 35 USC 103 depends on the incorrect conclusion that the Shirai et al. reference teaches a source node ascertaining whether M alternative paths exist and ascertaining whether an alternative path has available resources able to satisfy the R_{ACR} for transferring traffic between the source node and the destination node. As explained above, neither of those is present in the Shirai et al. reference. Therefore, even if the proposed combinations could be made, there is no prima facie case of obviousness against any of Applicant's claims because the proposed combinations do not provide the results suggested by the Examiner. The rejections under 35 USC 103 should be withdrawn.

Applicant respectfully submits that this case is in condition for allowance.

Respectfully Submitted,
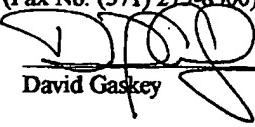
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CERTIFICATE OF FACSIMILE

I hereby certify that this Response, relative to Application Serial No. 10/762,022 is being facsimile transmitted to the Patent and Trademark Office (Fax No. (571) 273-8300) on October 24, 2008.

David Gaskey

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